

Indiana Department of Environmental Management
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FACT SHEET

Self-Disclosure and Environmental Audit Policy

This Fact Sheet is intended to provide general information concerning the Indiana Department of Environmental Management's (IDEM) Self-Disclosure and Environmental Audit Policy (Audit Policy), which was adopted on April 5, 1999.

What is the purpose of the policy and to whom does it apply?

The purpose of IDEM's Audit Policy is to enhance protection of human health and the environment by encouraging Indiana's regulated entities, including small businesses, to voluntarily discover, disclose, correct and prevent violations of federal and state environmental requirements.

Should you or your facility be assessed a penalty for violation of any of Indiana's environmental statutes or rules, this policy gives IDEM the discretion to reduce or eliminate your penalty if certain conditions are met.

Why should I identify and voluntarily disclose my violations to IDEM?

The Audit Policy provides a number of incentives to regulated entities for "self-policing" their operations and facilities. These incentives include:

- ✓ A reduction of up to 75% of your gravity-based penalty¹ if you satisfy Conditions 2. through 9. listed below. In addition, a reduction of up to 100% of your gravity-based penalty can be given if you satisfy all nine of these conditions;
- ✓ IDEM's assurance that it will not recommend prosecution of your facility to an Indiana Prosecuting Attorney or other prosecuting authority where IDEM determines that Conditions 2. through 9., at a minimum, have been met, and facility managers did not conceal or condone the violation(s); and

¹ A civil penalty is comprised of three components: a base penalty which considers both the potential for harm and extent of deviation as it relates to the seriousness of a violation; adjustment factors; and economic benefit of noncompliance. A discussion of each of these components can be found in IDEM's Civil Penalty Policy. A copy of this policy can be obtained by contacting IDEM's Office of Enforcement at (317) 233-5523 or via IDEM's internet website at <http://www.state.in.us/idem/oe/nrp/civil.html>.

- ✓ IDEM's assurance that it will not request a copy of your audit for purposes of civil or criminal investigation, if the findings of the audit are disclosed under this policy.

What are the conditions I must meet in order for me to take advantage of these incentives?

There are a total of nine conditions you must meet in order to take full advantage of the Audit Policy.

1. The violation was discovered by your facility through either an environmental audit or implementation of an Environmental Management System. Small regulated entities² receiving assistance from IDEM's Compliance and Technical Assistance Program, or other comparable programs, would meet this condition as well.
2. The violation was discovered by your facility voluntarily, but was not something that your facility is required to monitor or sample for as a condition of its permit or other legal requirements.
3. Your facility promptly disclosed the violation to IDEM within a maximum of twenty-one (21) calendar days after it became aware that the violation had occurred or may have occurred. However, IDEM encourages you to notify the agency as soon as you become aware that a violation has occurred or may have occurred.
4. Your facility identified and disclosed the violation before a federal, state or local agency conducted an inspection or investigation of your facility, before any of these agencies requested information from you concerning these violations, prior to the initiation of legal action by a third party or prior to someone filing a complaint concerning this violation.
5. You must correct the violation within sixty (60) days after you notified IDEM of the violation. You must also certify in writing that the violation has been corrected, and take appropriate measures to address any environmental or human harm which occurred due to the violation. Small regulated entities have up to ninety (90) days to correct the violation, but are encouraged to address the violation in the shortest possible time. These timeframes may be extended if approval from IDEM is granted.
6. You must agree, in writing, to take steps to prevent the violation from happening again. Examples of ways in which you can do this at your facility are: conducting an environmental audit, instituting an environmental management system, or putting in place other formalized approaches intended to identify and correct areas of noncompliance and prevent their future reoccurrence.

² A "small regulated entity" is defined in IDEM's Audit Policy as a "person, corporation, partnership, or other entity who employs 100 or fewer individuals across all facilities and operations owned by the entity, or an incorporated or unincorporated community with a population of less than 2,500 that owns facilities supplying municipal services."

7. The specific violation(s), or similar ones, cannot have occurred at your facility within the past three (3) years (if the ownership of your facility has remained the same during that period of time). In addition, there cannot be a history of this same type of violation (or similar ones) occurring at facilities owned by your parent company (if you have one) within the past three (3) years.
8. The violation can not be one that resulted in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment. In addition, the violation could not be one which violated the terms of any legal agreement with a regulatory agency.
9. The facility cooperates with IDEM in its efforts to determine if the Audit Policy applies to the violations you disclosed.

Refer to the Audit Policy for a complete explanation of terms for the conditions discussed above.

Does disclosing my violation mean that I will not have to pay a civil penalty?

Disclosure of your violation means that you may not have to pay the gravity-based portion of the civil penalty associated with the violation. However, IDEM may still seek to recover the economic benefit you may have derived, if any, from noncompliance with the rule you violated.

Do local and federal agencies recognize IDEM's Audit Policy?

IDEM will work closely with the Environmental Protection Agency and local agencies to encourage their support of this policy.

Where can I get a copy of IDEM's Audit Policy?

You can obtain a copy of the Audit Policy by visiting IDEM's website at <http://www.state.in.us/idem/oe/nrp/self.html> or by contacting the following staff person:

Self-Disclosure and Environmental Audit Administrator
Indiana Department of Environmental Management
Office of Enforcement
100 North Senate Avenue
Indianapolis, Indiana 46206-6015

toll-free at 1-800-451-6027, press 0, and ask for extension 35523
or
(317) 233-5523

Who can I contact with questions I might have concerning IDEM's Audit Policy?

Contact the Self-Disclosure and Environmental Audit Administrator at the address and telephone number listed above.